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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,274	02/05/2001	Jean Paul Marcade	06-00939US07	3685

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BROOKS, CAMERON & HUEBSCH, PLLC  
1221 NICOLLET AVENUE  
SUITE 500  
MINNEAPOLIS, MN 55403

EXAMINER
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WILLSE, DAVID H

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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05/25/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/777,274	<b>Applicant(s)</b> MARCADE ET AL.	
	<b>Examiner</b> David H. Willse	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 67-72, 74-80 and 82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 67-72, 74-80 and 82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 67-72, 74-80, and 82 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Martin, US 5,653,743, which discloses a body **1** having a superior end portion and a bifurcated inferior end portion defining a first leg **6** and a second leg **8** (Figure 1) and discloses extenders **18** in the form of grafts (column 4, lines 15-20; Figure 5). The length of the leg **6** as measured from the center of the opening **7** to the bottom end **6** is greater than the length of the leg **8**, as seen from the dimensions set forth at column 2, line 65, through column 3, line 3, and as shown in Figures 4 and 5, which further illustrate that the body **1** is configured so that the first leg **6** is capable of extending into a bifurcating section of vasculature and the second leg **8** is capable of terminating in an upstream section of vasculature. Since an extender **18** may be fully expanded (column 4, line 18) and must securely engage with the second leg **8**, a resultant increasing diameter toward the inferior end of said second leg would have been inherent or obvious because of the woven stainless steel

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supports involved (column 2, lines 53-55; column 3, lines 3-5). The *other* extender (of the left modular assembly depicted in Figure 5) is then *capable* of mating with the first leg **6** after the body **1** (of the right modular assembly in Figure 5) is placed in vasculature (Figure 4; column 4, lines 19-20), even though such was not the intended use in Martin. Regarding claims 70 and 82, in view of the diameter range specified at column 2, lines 61-62, and because of the aforementioned self-expanding mesh supports, the superior end **5** is *capable* of being placed within an abdominal aorta of a small mammal, with the first leg **6** being placed in an iliac artery.

Note: Because of the similar diameters of the bottom end **6** (column 2, line 63) and the opening **7** and short tube graft **8** (column 2, lines 65-67) and because of the compressible, self-expanding mesh supports, each extender **18** is sized such that it is certainly *capable* of mating with the longer leg **6**, even though such was not the intent. And the mating can occur after the body **1** is placed in vasculature of a cadaver (e.g., for demonstration or instructional purposes), of an animal (e.g., for analyzing the physiological response to a vascular obstruction), or of a human patient (e.g., by extending the longer leg **6** further into the external iliac artery rather than into the hypogastric or internal iliac artery and attaching an extender **18** to the leg **6**, or by extending the leg **6** into the hypogastric artery and using bypass surgery to circumvent any obstruction created by an extender **18** engaging the leg **6**, as evidenced by Goicoechea et al., US 5,800,508 at column 2, lines 1-7).

The Applicant's remarks have been considered. The examiner agrees that the Martin second leg **8** appears to be fabricated so as to have a constant diameter from a superior end to an inferior end. However, the insertion of an extender **18** into the inferior end and subsequent engagement by outward expansion results in both components having larger diameters along the

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mating regions by virtue of the resilience and expandability of the respective metallic stents or mesh supports. And nothing in the present claims requires that the diameter be *continuously* increasing from a superior end *edge* or *opening* to an inferior end *edge* or *opening* of the second leg **8**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is 571-272-4762 and who is generally available Monday through Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**/David H. Willse/  
Primary Examiner  
Art Unit 3738**